

AGENDA



Thursday, July 26, 2007

Law
RECOMMENDATION FOR COUNCIL ACTION
Item No. 18

Subject: Authorize negotiation and execution of an amendment to the legal services agreement with Brown McCarroll, L.L.P., Austin, TX, for legal representation, advice, and counsel concerning securing Austin's long-term water supply, including regulatory matters involving the Colorado River and the Lower Colorado River Authority before the Texas Commission on Environmental Quality, and contractual matters relating to raw water supply, for an increase of \$195,000, with a total contract amount not to exceed \$1,770,000.

Amount and Source of Funding: Funding is available in the Fiscal Year 2006-2007 Operating Budget of Austin Water Utility.

Fiscal Note: There is no unanticipated fiscal impact. A fiscal note is not required.

For More Information: David Allan Smith, City Attorney / 974-2268; Sharon Smith, Assistant City Attorney / 974-4773

Prior Council Action: On July 19, 2001, Council authorized \$60,000; On May 9, 2002, Council authorized \$100,000; On January 30, 2003, Council authorized \$250,000; On August 26, 2004, Council authorized \$223,000; On June 23, 2005, Council authorized \$295,000; On May 4, 2006, Council authorized \$255,000; On November 16, 2006, Council authorized \$265,000.

This amendment increases the amount of legal services contract with Brown McCarroll, L.L.P. for legal representation, advice, and counsel concerning securing Austin's long-term water supply. These legal services have included regulatory matters involving the Colorado River and the Lower Colorado River Authority (LCRA) – primarily negotiations with LCRA over contractual matters relating to raw water supply, and permit applications before the Texas Commission on Environmental Quality (TCEQ). This amendment is for an increase of \$195,000, with a total contract amount not to exceed \$1,770,000.

The City initially contracted with Bracewell & Patterson ("Bracewell") on June 30, 2000, for an original contract amount of \$40,000. In 2005 Brown McCarroll assumed this contract as part of a transfer of legal counsel from Bracewell to Brown McCarroll. Subsequent increases were authorized by the City Council in successive years, funded by the Austin Water Utility or jointly by the Austin Water Utility and Austin Energy totalling \$1,448,000. In addition, the contract was extended by administrative approval on two separate occasions: November 16, 2001, in the amount of \$43,000; and on January 15, 2003, in the amount of \$44,000. Administrative awards and Council approvals for these two firms for this representation for 2000 through 2006 have totalled \$1,575,000.

During the past fiscal year Brown McCarroll has represented the City in negotiations with LCRA that have culminated in two Memoranda of Understanding and a Settlement Agreement. These agreements resolved long-standing differences between the City and LCRA over each entity's rights to water in the Colorado River. To preserve the Settlement Agreement, the parties still need to negotiate and agree to a Supplemental Water Supply Agreement, and the Settlement Agreement provides the parties shall seek approval of the Water Supply Agreement by their governing bodies by August 31, 2007, or at a later date if the Parties agree. The Settlement Agreement also provides that if the parties do not enter into a Supplemental Water Supply Agreement, the Settlement Agreement becomes invalid.

The City will also continue to need legal representation in TCEQ water rights permits matters affecting the City. The Settlement Agreement provides for the City and LCRA to pursue or withdraw their various water rights applications, and each shall continue as a party to the other's proceedings, and will participate in the hearing process, but only to the extent necessary to ensure that subsequent permit processing does not injure its own rights.

Finally, Brown McCarroll has represented the City in on-going statutorily mandated regional and state water planning processes. However, the State is currently in the early part of the current Water Plan, which typically is updated every five years, so legal representation in this process for the next fiscal year is anticipated to be minimal.

The Council is now being requested to authorize the expenditure of an additional \$195,000 funded by the Austin Water Utility. The additional amount will be used to pay the fees and expenses of Brown McCarroll, L.L.P., anticipated through the end of the 2008 fiscal year to continue the representation outlined above. This will bring the total contract amount to \$1,770,000.